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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931.

No. 333

HARTFORD ACCIDENT & INDEMNITY COMPANY, APPELLANT,

vs.

O. L. BUNN, DOING BUSINESS AS BUNN ELECTRIC COMPANY, ET AL., APPELLEES.

MOTION TO DISMISS OR AFFIRM.

MARCELLUS GREEN,
GARNER W. GREEN,
CHAS. F. ENGLE,
S. B. LAUB.
Attorneys for Appellees.

MARCELLUS GREEN,
GARNER W. GREEN,
Of Counsel.

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MOTION TO DISMISS OR AFFIRM.

Comes Natchez Investment Company, Inc., appellee herein, and Engle & Laub, for whose use and benefit a judgment was rendered in favor of Natchez Investment Company, Inc., and move the court to dismiss as to them, or to affirm for want of substantial Federal question, and for reasons assign:

I.

The judgment in the Supreme Court of Mississippi in favor of appellee (Tr. 82) was a several judgment rendered jointly against Hartford Accident & Indemnity Company and Ætna Casualty & Surety Company,

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surety on the appeal bond to that court. No appeal has been taken by Ætna Casualty & Surety Company, and hence there is no jurisdiction at the instance of Hartford Accident & Indemnity Company alone.

II.

But if said appeal were properly had, which movants deny, then thereunder, as to these movants, dismissal must be had because there are no pleadings and/or proof in the transcript whereunder the judgment of the Supreme Court of Mississippi may be reversed.

III.

If said appeal were properly had, and if the court should hold it had jurisdiction to reverse, then that determined by the Mississippi Supreme Court was only an interpretation of a local contract in so far as these appellees are concerned.

IV.

The decree of the Chancellor (Tr. 59) in favor of Natchez Investment Company, Inc., for the use and benefit of Engle & Laub, was rendered, not under any statute law of the State of Mississippi attacked in this proceeding, but was rendered under the provisions of the contract documents, and there can be no Federal question involved as to the allowance of this attorney's fee, the court having held that the attorney's fee was allowable under the contract documents for the institution of concursus proceedings, and that said proceedings were necessary, and this judgment involves only a local question not connected in any way with the statute law of Mississippi attacked in this proceeding.

Wherefore these appellees make this motion, having specifically reserved their rights so to do (Tr. 103-4).

MARCELLUS GREEN,
GARNER W. GREEN,
CHAS. F. ENGLE,
S. B. LAUB,
Attorneys for Appellees.

MARCELLUS GREEN,
GARNER W. GREEN,
Of Counsel.

To Messrs. Arthur G. Powell, W. Calvin Wells, L. Barrett Jones, counsel for appellant:

Please take notice that the foregoing motion to dismiss or affirm, with the annexed brief, will be presented to the Supreme Court of the United States upon the 4th day of January, 1932, or as soon thereafter as may be, for the decision of the court thereon.

Annexed hereto is a copy of the brief of argument to be submitted with the said motion in support thereof.

MARCELLUS GREEN,
GARNER W. GREEN,
FORREST B. JACKSON,
CHAS. F. ENGLE,
S. B. LAUB,
Attorneys for Appellees.

Service of the foregoing is hereby acknowledged this 15th day of December, 1931.

W. CALVIN WILLS,
ARTHUR G. POWELL,
L. BARRETT JONES,
Counsel for Appellant.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931.

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BRIEF AND ARGUMENT.

General Statement.

Natchez Investment Company, [redacted] and Engle & Laub, for whose use and benefit (Tr. 59) the Chancery Court of Adams County, Mississippi, decreed the payment of $5,000 as attorney's fees (herein called appellees), move to dismiss or affirm, having specifically reserved this right (Tr. 103-4), wherein appearance was entered "without recognizing that any appeal has been validly made and without prejudice to right (to move) to dismiss."

Appellee, Natchez Investment Company, Inc., as complainant, filed this original bill (Tr. 1-9) against Hartford Accident & Indemnity Company and others.

None of the evidence whereon the decree (Tr. 59) in favor of appellees was rendered by the Chancery Court of Adams County, Mississippi, appears in the record, nor does that whereon the judgment in the Supreme Court (Tr. 73) was rendered, the form of the judgment there being:

> "Appellee, Natchez Investment Company, Inc,. and/or I. Levy, Receiver for the Natchez Investment Company, Inc., or T. S. Sholars, Trustee in Bankruptcy for Natchez Investment Company, Incorporated, for attorney's fees for services rendered by Engle & Laub do have and recover of and from the appellant Hartford Accident & Indemnity Company and of Ætna Casualty & Surety Company, surety in the appeal bond, the sum of Five Thousand Dollars, the amount of the decree in the court below, together with the further sum of Five Hundred Dollars, being damages at the rate of 5 per centum as allowed by law, as well as interest on the amount of said decree from date of rendition in the court below until paid at the rate of 6 per centum per annum. It is further ordered, adjudged and decreed that the costs on appeal be apportioned as follows:" (Tr. 82.)

The costs were taxed against the Hartford Accident & Indemnity Company and Ætna Casualty & Surety Company in so far as these appellees are concerned.

The Supreme Court of Mississippi heard the cause first upon the appeal of Hartford Accident & Indem-

nity Company to settle principles (Tr. 46); next, upon the appeal on the merits (Tr. 67); and finally upon a suggestion of error (Tr. 86).

POINT I.

There being a joint judgment (Tr. 74-83) against Hartford Accident & Indemnity Company and Aetna Casualty & Surety Company, no Jurisdiction of an Appeal by Hartford Accident & Indemnity Company alone.

We adopt the brief and argument on this point set forth in the brief filed by the other appellees who were defendants in intervention.

POINT II.

Pleadings and proof presenting a Federal Question condition jurisdiction here.

We adopt the brief and argument on this point set forth in the brief filed by the other appellees.

POINT III.

If said appeal were properly had, and if the court should hold it had jurisdiction to reverse, then that determined by the Mississippi Supreme Court was only an interpretation of a local contract in so far as these appellees are concerned.

We adopt the brief and argument on this point set forth in the brief filed by the other appellees who were defendants in intervention.

Point IV.

The decree of the Chancellor (Tr. 59) in favor of Natchez Investment Company, Inc., for the use and benefit of Engle & Laub, was rendered, not under any statute law of the State of Mississippi attacked in this proceeding, but was rendered under the provisions of the contract documents, and there can be no Federal question involved as to the allowance of this attorney's fee, the court having held that the attorney's fee was allowable under the contract documents for the institution of concursus proceedings, and that said proceedings were necessary, and this judgment involves only a local question not connected in any way with the statute law of Mississippi attacked in this proceeding.

The Article (30) of the contract documents contained the following provisions:

> "The bond shall also secure the owner the faithful performance of the contract, in strict accordance with plans and specifications, it shall protect the owner against all liens and claims that may be filed against the building according to the laws of the State of Mississippi and shall provide for the payment of reasonable attorney's fees for the enforcement of the contract and the institution of concursus proceedings, if such proceedings become necessary" (Tr. 3).

The Chancery Court of Adams County held that the evidence in the case entitled appellees to a decree (Tr. 59).

The rendering of this judgment in favor of appellee was not because of any statute law of the State of Mississippi, but this judgment was rendered solely upon the contract documents and the evidence adduced in support of the right to recover a judgment for attorney's fees.

The jurisprudence of Mississippi was in favor of the rendition of this judgment.

Dixon v. *United States Fidelity & Guaranty Company,* 117 So. 245; 150 Miss. 864.

We therefore submit that the appeal should be dismissed as to these appellees and the judgment affirmed because based upon a construction of a local contract involving in no aspect any Federal question.

Respectfully,

MARCELLUS GREEN,
GARNER W. GREEN,
CHAS. F. ENGLE,
S. B. LAUB.
Attorneys for Appellees.

MARCELLUS GREEN,
GARNER W. GREEN,
Of Counsel.